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No. 01-1420

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, *et al.*,
Petitioners,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, and other Persons Similarly Situated,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Washington

BRIEF OF CHILDREN'S DEFENSE FUND, CATHOLIC CHARITIES USA, CHILD WELFARE LEAGUE OF AMERICA, AND ALLIANCE FOR CHILDREN AND FAMILIES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF *AMICI CURIAE*	1
STATEMENT OF THE CASE	4
SUMMARY OF ARGUMENT	9
ARGUMENT	10
I. THE PETITION SHOULD BE GRANTED BECAUSE THE STATE COURT DECISION ON A QUESTION OF FEDERAL LAW CONFLICTS WITH THE INTERPRETATION OF THE FEDERAL AGENCY CHARGED WITH IMPLEMENTING THE LAW	10
II. REVIEW SHOULD BE GRANTED TO RESOLVE THE CONFLICT CREATED BETWEEN THE STATES ON A QUESTION OF FEDERAL LAW	13
III. REVIEW SHOULD BE GRANTED BECAUSE THIS CASE RAISES ISSUES OF NATIONAL IMPORTANCE REGARDING THE AVAILABILITY AND USE OF SOCIAL SECURITY BENEFITS FOR NEEDY CHILDREN	14
CONCLUSION	18

TABLE OF AUTHORITIES

CASES	Page
Auer v. Robbins, 519 U.S. 452 (1997)	10
C.G.A. v. Alaska, 824 P.2d 1364 (Alaska 1992)	13
Chevron U.S.A., Inc. v. Natural Resources Defense Counsel, Inc., 467 U.S. 837 (1984)	10
In re the Guardianship of Nelson, 547 N.W.2d 105 (Minn. Ct. App. 1996)	14
Mason v. Sybinski, 280 F.3d 788 (7th Cir. 2002)	11, 14
King v. Schafer, 940 F.2d 1182 (8th Cir. 1991)	11, 14
Mellies v. Mellies, 815 P.2d 114 (Kan. 1991)	14
United Food and Chemical Workers Union Local 751 v. Brown Group, Inc., 517 U.S. 544 (1996)	11

STATUTES	
20 C.F.R. § 404.2010(b)	5
20 C.F.R. § 404.2021(b)	5, 15
20 C.F.R. § 404.2035	6
20 C.F.R. § 404.2040(a)(1)	6, 11
20 C.F.R. § 404.2040(d)	6
20 C.F.R. § 404.2045	6
20 C.F.R. § 406.460(a)	11
20 C.F.R. § 416.610(b)	5
20 C.F.R. § 416.621(b)	5
20 C.F.R. § 416.635(a)	6
20 C.F.R. § 416.640(a)	6
20 C.F.R. § 416.645	6
42 U.S.C. §§ 1381, *et seq*	4
42 U.S.C. § 1383(a)(2)(A)(ii)(I)	5
42 U.S.C. § 1383(a)(2)(A)(iii)	7
42 U.S.C. § 1383(a)(2)(B)(i)	6
42 U.S.C. §§ 1383(a)(2)(B)(xi)-(xiii)	6
42 U.S.C. §§ 1383(a)(2)(C)(ii) and (iv)	6
42 U.S.C. §§ 401, *et seq*	5

TABLE OF AUTHORITIES—Continued

	Page
42 U.S.C. § 405(j)(1)(A)	5, 7
42 U.S.C. § 405(j)(2)(A)	6
42 U.S.C. § 405(j)(2)(E)(ii)	6
42 U.S.C. §§ 405(j)(3)(B) and (D)	6
42 U.S.C. § 407(a)	6, 12
Wash. Rev. Code § 13.34.130(2)	4

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INTEREST OF *AMICI CURIAE* [1]

Amici curiae Children's Defense Fund, Catholic Charities USA, Child Welfare League of America, and Alliance for Children and Families (collectively, "*amici*") are national, non-profit organizations dedicated to, among other things, identifying and addressing issues impacting children in the

[1] No counsel for any party had any role in authoring this brief, and no person other than the named *amici* and their counsel made any monetary contribution to its preparation and submission.

United States—including children with special needs and/or disabilities who are in foster care and are eligible for benefits from the Social Security Administration.[2]

For thirty years, the Children's Defense Fund ("CDF") has been advocating to ensure every child in America a Healthy Start, a Head Start, a Fair Start, a Safe Start, and a Moral Start in life and successful passage to adulthood with the help of caring families and communities. CDF pays particular attention to the needs of poor and minority children and those with disabilities. CDF also has long advocated on behalf of children who have been abused and/or neglected and, as a result, sometimes end up in the public foster care system. In its advocacy for children, CDF has seen first-hand the vital role the federal Supplemental Security Income Program plays in securing the futures of children with a wide range of physical, emotional, and mental disabilities.

Catholic Charities USA is one of the nation's largest, private networks of people helping people. Since 1727, when the Ursuline Sisters came from France to New Orleans and opened the first Catholic Charities orphanage, Catholic Charities' network of independent social service agencies and volunteers have been working to reduce poverty, support families, and build communities in the United States. In all, more than 1,400 local Catholic Charities agencies with more than 300,000 staff members and volunteers serve nearly 10 million people in need each year. Many of these Catholic Charities agencies provide direct services to children in the foster care system, including nearly 20,000 children in 1999 alone. In addition, in 1991, Catholic Charities agencies completed 4,384 adoptions, 60% of which were for children with special needs.

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[2] Counsel for both petitioners and respondents have consented to the filing of this Brief. Pursuant to Sup. Ct. R. 37.2(a), *amici* have filed letters stating such consent with the Clerk of the Court.

The Child Welfare League of America ("CWLA") is an 82-year-old association of nearly 1,200 public and private child and family-serving organizations. Its member agencies collectively serve more than 3 million abused, neglected, and vulnerable children and families every year. Founded in 1920, CWLA has long been involved in the development of quality programs, practices and policies in all areas of child welfare, including provision of services to children in foster care. Virtually all of CWLA's fifty state and approximately 150 local public child welfare agencies serve as representative payees for children eligible for SSI benefits. Other CWLA members, including non-profit direct childcare agencies, on occasion also may serve as representative payees.

The Alliance for Children and Families ("Alliance") is a nonprofit membership association representing more than 350 child- and family-serving organizations across the U.S. and Canada. Alliance members serve more than 5 million individuals each year in more than 2000 communities. The Alliance mission is to strengthen members' capacity to serve and advocate for children, families and communities. Alliance members provide a vast array of services covering foster-family care, residential care, adoption and family preservation. The Alliance advocates on behalf of neglected and abused children and promotes policies that enhance child, family and community initiatives that make children safe and productive individuals.

Amici curiae CDF, Catholic Charities USA, CWLA, and Alliance believe that the Washington State Supreme Court decision before this Court could have a profound national impact upon the low income and special needs children for whom they advocate. While three of the organizations participating as *amici* have member agencies who sometimes serve as representative payees, and therefore may be impacted in that capacity by the Washington decision, the interest of *amici* in this case evolves more broadly from their long history of advocacy on behalf of children in the child

welfare system and a particular commitment to the needs of children with disabilities. *Amici* believe that the Washington Supreme Court's decision will deprive thousands of American children with disabilities in the public foster care system of key supports essential to their well-being and healthy development. Because *amici* devote significant efforts to nationwide advocacy on behalf of children with disabilities and others in need of special support, the challenges to *amici* in meeting the needs of these children will grow as a result of the Washington Supreme Court decision. *Amici* are filing this brief not only to address the legal issues associated with the Washington court's ruling, but to offer their unique insight into the policy implications that the decision may have on children nationally.

STATEMENT OF THE CASE

In the State of Washington, dependent children who have been abandoned, neglected or abused or who have no parent, guardian, or other custodian capable of adequately caring for them are placed in foster care under the care and custody of the Washington Department of Social and Health Services ("DSHS"). While placement of the child with a relative is the preferred option under Washington law (Wash. Rev. Code § 13.34.130(2)), DSHS will assume responsibility for a child's care when there is no suitable relative willing and/or able to provide appropriate nurturing and care. As of September 1999, there were 10,578 foster children in the care of DSHS. *See* Appendix to Petition for a Writ of Certiorari (hereinafter "App.") at 49, ¶ 3.

A number of the children receiving foster care in Washington are eligible for benefits from the Social Security Administration ("SSA"). At issue in this case are two types of benefits the children may receive under the Social Security Act: (1) Supplemental Security Income ("SSI") benefits under Title XVI of the Social Security Act, 42 U.S.C.

§§ 1381, *et seq.*, for children who are blind or disabled and who do not have sufficient income or resources to maintain a minimum standard of living; and (2) benefits for unmarried minor children who were dependent upon a wage earner entitled to retirement benefits under Title II of the Act and whose support has now been lost, due to the wage earner's death or disability. *See* 42 U.S.C. §§ 401, *et seq.* Of the 10,578 foster children in foster care in Washington in September 1999, approximately 923 children received SSI benefits under Title XVI, 469 children received Title II benefits, and 88 children received both. App. at 49, ¶¶ 6-7.

In general, where a Social Security beneficiary is under 18 years of age, the Commissioner of Social Security ("Commissioner") will appoint a representative payee to receive and administer Title II and/or SSI benefits on behalf of the child. 20 C.F.R. §§ 404.2010(b); 416.610(b). Under federal law, the Commissioner is authorized to designate a representative payee only where it would serve the "best interests" of the beneficiary. 42 U.S.C. §§ 405(j)(1)(A); 1383(a)(2)(A)(ii)(I). In the case of minor children, federal regulations provide that the appointment of a parent, step-parent, relative or close friend is preferred, but that—as a matter of last resort—the Commissioner may appoint an authorized social service agency. 20 C.F.R. §§ 404.2021(b); 416.621(b). For many children in Washington's foster care system, there is no parent, step-parent, relative or close friend that is suitable or willing to receive benefits on the child's behalf. Accordingly, in a number of instances, the Commissioner endeavored to appoint DSHS to serve as representative payee for foster care children eligible to receive SSI and Title II benefits.

Both prior to and after appointing an agency such as DSHS as representative payee, the Commissioner must comply with a number of federal statutes and regulations designed to ensure that the state agency will act in the best interests of the child. The Commissioner is required to conduct an

investigation of the agency. 42 U.S.C. §§ 405(j)(2)(A); 1383(a)(2)(B)(i). The Commissioner must also notify the beneficiary's legal guardian of the appointment and provide an opportunity for appeal of the appointment. 42 U.S.C. §§ 405(j)(2)(E)(ii); 1383(a)(2)(B)(xi)-(xiii).

Following the appointment of DSHS or a comparable state agency, the Commissioner is required to "establish a system of accountability" to insure that the benefits are properly used and can require a report from the payee on how the benefits are being used at any time. 42 U.S.C. §§ 405(j)(3)(B) and (D); 1383(a)(2)(C)(ii) and (iv). One component of this "system of accountability," at least as it applies in this case to DSHS, requires that the representative payee submit to the SSA a yearly accounting of benefits received, used and conserved for each child receiving benefits. App. at 67. The representative payee may use the benefits "only for the use and benefit of the beneficiary in a manner . . . in the best interests of the beneficiary." 20 C.F.R. §§ 404.2035; 416.635(a). Under federal regulations, the benefits are deemed to have been used for the beneficiary's benefit "if they are used for the beneficiary's current maintenance," which includes the "cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items," with any remaining amount conserved or invested. 20 C.F.R. §§ 404.2040(a)(1); 404.2045; 416.640(a); 416.645.

In order to ensure that the benefits are used for such current care expenses, the Social Security Act (the "Act") contains an anti-attachment provision aimed at preventing creditors from employing legal process (such as garnishment or attachment) to require representative payees to use the benefits to pay the past debts of the beneficiary. 42 U.S.C. § 407(a).[3] If the

[3] Notably, while the representative payee "may not be *required* to use benefit payments to satisfy a debt of the beneficiary," it is *permissible* for a payee to satisfy such a debt "if the current and reasonably foreseeable needs of the beneficiary are met." 20 C.F.R. 404.2040(d).

Commissioner determines during the ongoing review of the payee that the payee has misused benefits in any way—whether by improperly using them to pay past debts or for expenses otherwise not in the beneficiary's best interest—federal law requires that the Commissioner promptly terminate payment of benefits to the payee and certify payment to an alternative payee. 42 U.S.C §§ 405(j)(1)(A); 1383(a)(2)(A)(iii).

In this case, in accordance with the foregoing procedures, the Commissioner appointed DSHS to be the representative payee for the children in the Respondent class, all of whom receive (or received) foster care from the State of Washington and are (or were) eligible to receive SSI and/or Title II benefits. App. at 7-13. Following its appointment as representative payee, DSHS began receiving payments from the SSA on behalf of the minor beneficiaries in its care and used those funds to pay for the costs of current maintenance for the children. *Id.* Included among the costs of current maintenance were certain foster care expenses. In other words, DSHS would reimburse itself for foster care provided to beneficiaries from the Title II and SSI benefits those beneficiaries received, and place any remaining money in interest bearing accounts. *Id.* It is undisputed that all of those foster care expenses consist of costs for current maintenance and are spent on the beneficiaries. *Id.*

The Commissioner, pursuant to his ongoing review and oversight responsibilities, has repeatedly reviewed and approved DSHS's administration of Social Security benefits, including specifically DSHS's policy of applying SSI and Title II benefits to foster care expenses. In August 1998, the SSA conducted an audit of DSHS and found no defects in its performance as a representative payee. *See* Brief for the United States as Amicus Curiae in the Supreme Court of the United States at 7. To the contrary, the SSA determined that DSHS's administration of benefits was exemplary, conclud-

ing that DSHS "is a model agency that could stand as a prototype for effective organizational payeeship." App. at 78. In this very case, the United States filed two briefs in Washington state courts and one brief with this Court in which the Commissioner endorsed DSHS's performance as a representative payee and expressly approved DSHS's use of SSI and Title II benefits to defray the cost of current foster care.[4]

Despite the Commissioner's conclusion that DSHS, as representative payee, has operated within the bounds of the applicable federal statutes and regulations and in the best interests of the beneficiaries within its care, Respondents instituted the present suit in 1996 alleging that DSHS's administration of Social Security benefits violated federal law. In particular, Respondents alleged that DSHS's use of benefits to pay a portion of the costs of foster care for the beneficiaries—even though such funds are expended solely for the current maintenance of the beneficiaries—violates the anti-attachment provision of the Act, 42 U.S.C. § 407(a).

Following class certification on behalf of all past, present and future foster children in Washington who receive SSI or Title II benefits for whom DSHS acts or has sought to act as representative payee, the Okanogan County Superior Court entered summary judgment in favor of the Respondents. Petitioners appealed to the Washington Court of Appeals, which certified the case to the Washington Supreme Court. According to the five-justice majority of the Washington Supreme Court, the "critical question" before it was whether DSHS "acts as a creditor . . . when it reimburses itself for

[4] *See generally* Brief for the United States as Amicus Curiae in the Supreme Court of the United States; Brief for the Amicus Curiae Kenneth Apfel, Comm'r of the United States Soc. Sec. Admin., in the Supreme Court of the State of Washington ("Commissioner's Br."); Supplemental Brief for the Amicus Curiae Kenneth Apfel, Comm'r of the United States Soc. Sec. Admin, in the Supreme Court of the State of Washington.

foster care costs out of the foster children's benefits." App. at 19-20. Following two oral arguments and a remand to the trial court for additional fact-finding, the Court concluded that DSHS does act as a creditor in violation of the Social Security Act and therefore affirmed the trial court's decision. Petitioners timely filed a Petition for a Writ of Certiorari seeking review of that decision with this Court.

The question now presented by the Petition for a Writ of Certiorari ("Petition") is whether, under federal law, DSHS—in its role as representative payee for foster children eligible to receive SSI and Title II benefits—properly may use those benefits to pay for the current care and maintenance of the beneficiaries, including devoting a portion of the benefits to pay for foster care expenses for those children.

SUMMARY OF ARGUMENT

The Court should grant the writ of certiorari because the decision of the Washington Supreme Court creates an impermissible legal anomaly. Namely, one lone state court has interpreted federal statutory law to invalidate a practice in that state that: (1) is not only permitted, but endorsed by the federal agency charged with interpreting and implementing that law; and (2) is presumptively valid in the forty-nine remaining states. Thus, what is permitted under federal law in every other state is not permitted in the State of Washington. Such a result is untenable in our federal system. The practice addressed by the Washington Supreme Court's decision is either valid in every state or in none—it cannot be subject to piecemeal resolution on a case-by-case, state-by-state basis. Federal law cannot yield potentially inconsistent results based on application by individual jurisdictions. Moreover, the policy rationale upon which the Washington Supreme Court rests its decision fails adequately to consider a host of other, outweighing policy considerations of national scope and import that should guide the resolution of the

question presented by the Petition. Accordingly, the Court should grant the writ of certiorari to review and address the relevant federal and policy issues implicated by the Washington Supreme Court's decision.

ARGUMENT

I. THE PETITION SHOULD BE GRANTED BECAUSE THE STATE COURT DECISION ON A QUESTION OF FEDERAL LAW CONFLICTS WITH THE INTERPRETATION OF THE FEDERAL AGENCY CHARGED WITH IMPLEMENTING THE LAW.

The Washington Supreme Court concluded that a federal statute, implemented by the Commissioner of the Social Security Administration, prohibits DSHS from using beneficiaries' Social Security benefits to pay for a portion of the foster care DSHS provides to those beneficiaries. App. at 30-31. However, the Commissioner has expressly stated on multiple occasions *in this very case,* and otherwise, that a State acting as representative payee may offset the costs associated with the provision of foster care against the Title II and Title XVI social security benefits that a child in foster care receives. *See, e.g.*, Commissioner's Br. at 10-11. Thus, the Washington Supreme Court would effectively substitute its judgment for that of the Commissioner with respect to this issue of federal law, a result squarely at odds with the well-established principle, announced by this Court, that the Commissioner's construction of the Social Security Act and its corresponding regulations is entitled to substantial deference. *Auer v. Robbins*, 519 U.S. 452, 457-457 (1997) (quoting *Chevron U.S.A., Inc. v. Natural Resources Defense Counsel, Inc.*, 467 U.S. 837, 842-43 (1984)).

It is, of course, undisputed that SSA regulations expressly allow Social Security benefits to be used for the costs of a child's current maintenance, including food, shelter, clothing,

medical care, and personal comfort items. 20 C.F.R. 404.2040(a)(1), 406.460(a). It is likewise undisputed that the foster care expenses at issue here were spent on the beneficiaries and included precisely the same types of costs (*i.e.*, food, clothing, shelter, and other needs) that are expressly authorized by the governing federal regulations. App. at 11-13. Accordingly, following an audit of DSHS in August 1998, the Commissioner had no trouble concluding that "foster care is a type of current maintenance" (Commissioner's Br. at 10, 12, 15) and that DSHS's use of SSI and Title II funds to pay for foster care expenses fully complies with representative payee portions of the Act and the beneficiaries' best interests. *Id.* at 12, 15.

Because the Commissioner's interpretation (and, indeed, any reasonable interpretation of the statute) confirms that DSHS's actions are in compliance with the Social Security Act's representative payee provision and regulations, those same actions cannot then be construed simultaneously to violate the anti-attachment portion of the Act. The Act's provisions must be read together and as parts of a whole. *See United Food and Chemical Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 549-550 (1996). Pursuant to this bedrock principle of statutory construction, Section 407(a)'s prohibition on "creditors" using "legal process" to obtain benefits cannot outlaw actions condoned (if not required) by § 405(j)'s treatment of representative payees. "Section 407(a) was not intended to outlaw a procedure expressly authorized by the Social Security Administration's own regulations." *King v. Schafer*, 940 F.2d 1182, 1185 (8th Cir. 1991). To hold otherwise would render a portion of the Act meaningless. Accordingly, if DSHS's use of SSI and Title II benefits for current maintenance (such as foster care) complies with § 405(j) and the corresponding regulations (and it does), that same practice cannot then violate § 407(a). *Id.*; *Mason v. Sybinski*, 280 F.3d 788, 792-93 (7th Cir. 2002)

(a "representative payee's responsible management of a Social Security recipient's benefits cannot amount to 'other legal process'" in violation of § 407(a)).

Of course, whatever tension the Washington Supreme Court might have found to exist between § 407(a) and the representative payee portions of the Act is effectively moot, for § 407(a) cannot fairly be read to apply to DSHS's conduct in this case. Section 407(a) provides that future benefits payments are not "transferable or assignable" and are not subject to "execution, levy, attachment, garnishment, or other legal process." However, DSHS's use of benefits to pay for foster care expenses is neither an assignment of future payments, nor an execution, levy, attachment, garnishment or other legal process. Rather, it is the use of present funds to pay for current expenses and does not require DSHS to resort to garnishment, attachment or any such legal process. As such, § 407(a) has no application.

Moreover, the Washington Supreme Court's interpretation of the Act would have the illogical result of simultaneously *requiring* all non-agency representative payees to use SSI and Title II benefits to pay for the costs of a child's current care while *preventing* agency payees from using the benefits to pay for an entire category of current care (*i.e.*, foster care). Under the Washington Supreme Court's decision, DSHS—by virtue of its status as a state agency—finds itself far more restricted in how it may spend Social Security benefits on the beneficiaries' behalf than any other payee would be. This conclusion, as the Commissioner's interpretation acknowledges, is not only contrary to the governing statutes and regulations, but also contrary to logic. *See* Brief for the United States as Amicus Curiae in the Supreme Court of the United States at 18-19. There is no reason to treat a state agency acting as a representative payee differently (or, indeed, worse) than any other representative payee. When a representative payee uses Social Security benefits to pay for

current maintenance—whether that payee is a state agency or private individual—such conduct complies with governing federal law, as interpreted time and time again by the Commissioner.

Given the Commissioner's considered application of the governing federal law to the undisputed facts of this case, coupled with its specialized expertise on this topic, a state court should not substitute its judgment for that of the Commissioner. This Court should grant review to correct the state court's failure to afford due deference to the Commissioner's interpretation of the Act.

II. REVIEW SHOULD BE GRANTED TO RESOLVE THE CONFLICT CREATED BETWEEN THE STATES ON A QUESTION OF FEDERAL LAW.

The Washington Supreme Court's decision on this matter of federal law not only conflicts with the interpretation given by the responsible federal agency, it also creates an untenable anomaly in our federal system. The very same practice—borne entirely of federal law—is now valid in all states, save Washington. The scope and meaning of federal law cannot be subject to such selective, state-by-state application. This Court should grant certiorari in order to resolve this issue of a federal law on a uniform, national basis.

Pursuant to the Washington Supreme Court's decision, a state agency in Washington, acting as a representative payee for federal Social Security benefits, cannot use those benefits to pay for foster care expenses for the Social Security beneficiary. However, just to the north, a corresponding Alaskan state agency can apply those same federal benefits to defray the costs of foster care. *C.G.A. v. Alaska*, 824 P.2d 1364, 1369 n.14 (Alaska 1992) (holding that the state may act as representative payee and "could legitimately apply [the child's] benefits toward foster care"). Likewise, agencies

within the Seventh and Eighth Circuits may do the same. *See Mason*, 280 F.3d at 792 (holding that a representative payee's decision to apply benefits to the recipient's cost of care does not violate § 407(a) "even when the payee is the state itself"); *King*, 940 F.2d at 1185 (holding that Section 407(a) does not bar a State from using benefits to pay for maintenance of children under its care). In addition, as Petitioners note, the Washington Supreme Court decision appears to be in substantial tension with the caselaw of Kansas and Minnesota, as well. *See* Petition at 20-21 (citing *Mellies v. Mellies*, 815 P.2d 114 (Kan. 1991) and *In re the Guardianship of Nelson*, 547 N.W.2d 105 (Minn. Ct. App. 1996)). In fact, the SSA reports that "most states" currently use Title II and SSI benefits to offset the State's cost of providing foster care to children. *See* Brief for the United States as Amicus Curiae in the Supreme Court of the United States at 16.

Accordingly, the Washington Supreme Court's decision is in conflict with reported decisions from five jurisdictions and with the current practice in the majority of states. This conflict is not only untenable under principles of federalism, it also severely hampers the Commissioner's ability to administer a uniform nationwide Social Security program. Under these circumstances, the Court should grant review in order to resolve this issue of federal law, and thereby ensure uniform application of that law.

III. REVIEW SHOULD BE GRANTED BECAUSE THIS CASE RAISES ISSUES OF NATIONAL IMPORTANCE REGARDING THE AVAILABILITY AND USE OF SOCIAL SECURITY BENEFITS FOR NEEDY CHILDREN.

This case presents issues of profound national impact. Currently, there are more than one-half million abused and neglected children in foster care throughout the nation, of whom approximately one-quarter are disabled in some

manner and many of whom are eligible for SSI and Title II benefits. Over the years, a number of states have taken steps to help identify children with disabilities and, where appropriate, attempt to help these children qualify for SSI benefits. In Washington, DSHS has made special efforts to hire a specially-trained staff, whose sole job it is to review the foster care caseload for children with disabilities, assess their needs, and assist them in applying to the Social Security Administration for benefits. Washington also appeals preliminary denials of benefits to ensure that the children receive the benefits to which they are entitled. Were it not for this effort by the state agencies in Washington and elsewhere, the disabilities of many of these children might go unrecognized, and they would never be determined eligible for—or actually receive—benefits. The state agency's willingness to serve as representative payee is essential to these children receiving benefits. Because many of these children often have no relative, guardian or close friend who is suitable and willing to serve as a representative payee on their behalf, children depend on the state agency to perform that function. The rule announced by the Washington Supreme Court could severely affect whether and how the States decide to continue in these roles.

As the Commissioner observed, the Supreme Court of Washington's decision "hamstring[s] the Commissioner's ability to locate effective representative payees for minor children" by "eviscerat[ing] the important function" that state agencies play as representative payee. Commissioner's Br. at 8. What the Commissioner understands—and what the Washington Supreme Court failed adequately to consider—is that an agency like DSHS only acts as representative payee when there is *no one else to act in that capacity*, a result ensured by SSA regulations listing the state agencies last in the order of preference in selecting a representative payee. 20 C.F.R. § 404.2021(b).

Given the fiscal pressures on state governments, Washington likely will not be able to continue the investment of staff and resources to identify children with disabilities and seek out Social Security benefits on their behalf if the Washington Supreme Court decision is allowed to stand. The state's ability to make the necessary investments to represent the child's interest to the SSA and act as a representative payee for children will be severely impaired unless it can offset the costs involved in seeking and monitoring benefits for these children.

Precluding states from offsetting foster care expenses with Social Security benefits will inevitably produce a host of unfortunate results. First, if agencies like DSHS are unable to serve as representative payee (either at all or to the same extent that they have done in the past), many children in foster care who are eligible for Social Security benefits and who heretofore have had no one but such agencies (the SSA's last choice) to act as their representative payee *will not receive* their benefits. In fact, it is very likely that the severity of their disabilities and potential for receiving benefits will not even be recognized. Second, while a reduction in DSHS's role as representative payee does not mean that Washington's children will go without foster care, it does mean that, without the offset, there will be fewer resources for *all* of the children in foster care in Washington. This serves only to harm those children who already have too little.

Accordingly, in addition to the loss of benefits, children who are eligible for SSI benefits would also be disadvantaged in other ways. For example, many of these children would not get the special attention that is now directed to their disabilities. The SSI application process requires a thorough assessment of the applicants' disabilities and how those disabilities impact their daily functioning. This assessment is especially important in determining the children's individual

service needs. Some of the children also receive extra benefits and services that are not normally available in foster care, such as special therapy and rehabilitation, and sometimes housing modifications. They may also receive a special trust account to help pay for additional services and supports.

The receipt of these benefits not only helps ensure a minimum standard of care for the beneficiaries, but also helps children continue to receive the services and supports they need when they are ready to leave foster care. For example, a child's eligibility for SSI, and consequently also for Medicaid, may make it easier for that child to reunite safely with his or her family, which may be overwhelmed by the financial responsibility of caring for a child with special needs. In the State of Washington in 2000, 119 children in foster care with SSI benefits were reunited with their families. In instances where the child who returns home continues to be financially eligible for SSI, the benefits help the parent adequately meet the child's special needs. Receipt of benefits may also help to facilitate adoptions for children, when returning home is not appropriate or safe, since children eligible for SSI are automatically eligible for federal Title IV-E Adoption Assistance payments. These payments help to ease the financial challenges faced by prospective adoptive parents who wish to adopt a child with special needs, and also automatically trigger the child's eligibility for Medicaid assistance. In the year 2000, 72 children with Title XVI benefits were adopted in Washington.

The receipt of SSI benefits also assists those young people who age out of foster care at age 18 or older, but who as adults with disabilities still need continuing assistance from the Social Security system. The fact that a young adult received SSI as a child in foster care can often ease the way for help from the adult system. In addition, children who

receive Title II and SSI may exit care with at least some savings in a trust fund to help them as they struggle to make it on their own for the first time.

Because the State is—by federal law—the last line of defense for children in foster care who are eligible for Social Security benefits, if the State is precluded or discouraged from acting as the representative payee for those children, it is likely that no one will. These children therefore face the possibility of losing a lifetime's worth of benefits if the State cannot assume the role of representative payee. Because the Washington Supreme Court's interpretation of the Social Security Act and regulations discourages state agencies from serving as representative payees, this decision likely will have a profound adverse impact on the very children the Act is designed to protect.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be granted.

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